



STATE BOARD OF EQUALIZATION

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May 13, 1996

Mr. D--- M. D---, CPA
Vice President
--- --- --- Incorporated
XXXX --- Road, Suite XXX
---, CA XXXXX

Dear Mr. D---:

This is in reply to your April 22, 1995 letter regarding the application of sales tax to your client's charges for providing lighting direction, lighting equipment and equipment operators to qualified motion picture producers.

You note your client has treated the transactions as rentals of lighting equipment coupled with concurrent services. You explain that the charges for the services and the equipment are separately stated on billings to the producers, and in no case is the equipment provided without the services. You ask whether your client is using the equipment to provide "qualified production services" as defined in Sales and Use Tax Regulation 1529(b)(2).

The definition of "qualified production services" in Regulation 1529 is based on the definition at subdivision (b)(4) of Revenue and Taxation Code section 6010.6. The term is there defined to mean any fabrication performed by any person in any capacity on film, tape, or other audio-visual embodiment in connection with the production of all or any part of any qualified motion picture. We do not believe that operating lighting equipment results in a fabrication of any audio-visual embodiment to be within the definition of "qualified production services." That is not to say the application of tax is different, because we do not believe your client is leasing out its equipment under the facts you provide.

In determining whether a person leases equipment or merely provides a service and uses his or her equipment in providing the service, we look to whether the customer could have obtained the property without the operator. When, as in the case you note, the owner of the property requires the customer to contract for the owner of the property to operate the property, we do not believe the owner transfers possession and control of the equipment to the customer. Rather, the owner makes the use of his or her equipment. We agree with your conclusion, that, given the facts you provided, your client is the consumer of equipment used to provide lighting services and should pay sales tax reimbursement or use tax at the time of acquiring the equipment used to provide the services.

We hope this answers your question; however, if you need further information feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

cc: Sacramento District Administrator - KH